



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)		
)		
MILDRED TAYLOR,)		
)		
Complainant,)		
)	Charge No.:	1998CF0629
and)	EEOC No.:	21B973788
)	ALS No.:	10593
SOI, CHICAGO READ MENTAL)		
HEALTH CENTER, and)		
GARTH AMUNDSON,)		
)		
Respondents.)		

RECOMMENDED ORDER AND DECISION

On September 10, 1998, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Mildred Taylor. That complaint alleged that the individual Respondent, Garth Amundson, sexually harassed Complainant and that the other Respondent, SOI, Chicago Read Mental Health Center, was told about Amundson's harassment and did not take steps to stop it. The complaint further alleged that Chicago Read retaliated against Complainant for complaining of sexual harassment.

This matter now comes on to be heard on Respondents' Instant Motion to Dismiss Complaint of Civil Rights Violation. Complainant has filed a written response to the motion, and Respondents have filed a written reply to that response. The matter is now ready for decision.

FINDINGS OF FACT

The following findings of fact are based upon the case file in this matter.

1. On July 28, 1998, Complainant filed a complaint in United States District Court against Chicago Read Mental Health Center. That complaint alleged that Chicago Read was liable for sexual harassment against Complainant because the hospital had done nothing to stop sexual harassment against her by Garth Amundson. The complaint further alleged that Chicago Read retaliated against Complainant for complaining of Amundson's sexual harassment.

2. Amundson was not a defendant in the federal suit.

3. On Respondents' motion, the instant case was stayed in the Human Rights Commission to allow the parties to pursue the federal suit.

4. On January 10, 2000, District Judge William Hibbler granted Chicago Read's motion for summary judgment in the federal suit and dismissed that suit with prejudice.

5. In his written order granting Chicago Read's motion, Judge Hibbler specifically found that Amundson's actions did not amount to actionable sexual harassment, even if things happened as Complainant said they did.

6. Judge Hibbler's ruling was not appealed and the time for such appeal has expired.

CONCLUSIONS OF LAW

1. The federal court's decision on Complainant's claim was a final decision on the merits of that claim.

2. Complainant's claim in this forum against Chicago Read Medical Center is barred under the doctrine of *res judicata*.

3. Complainant's claim in this forum against Garth Amundson is barred under the doctrine of collateral estoppel.

DISCUSSION

On July 28, 1998, Complainant filed a complaint in United States District Court against Chicago Read Mental Health Center. That complaint alleged that Chicago Read was liable for sexual harassment against Complainant because the hospital had done nothing to stop sexual harassment against her by Garth Amundson. The complaint further alleged that Chicago Read retaliated against Complainant for complaining of Amundson's sexual harassment. Amundson was not a defendant in the federal suit.

On Respondents' motion, the instant case was stayed in the Human Rights Commission to allow the parties to pursue the federal suit. On January 10, 2000, District Judge William Hibbler granted Chicago Read's motion for summary judgment in the federal suit and dismissed that suit with prejudice. Judge Hibbler's ruling was not appealed and the time for such appeal has expired.

Respondents now move for dismissal of the entire case. According to their arguments, the claim against Chicago Read is

barred by the doctrine of *res judicata*, while the federal court's specific findings bar the claim against Garth Amundson under the doctrine of collateral estoppel.

The doctrine of *res judicata* applies if three elements are met: 1) the parties in the present action must be the same parties, or in privity with the same parties, as the ones in the prior action; 2) the cause of action must be the same as in the prior action, and 3) a decision on the merits must have been entered in the prior action. ***Housing Auth. for LaSalle County v. Young Men's Christian Assoc. of Ottawa***, 101 Ill. 2d 246, 461 N.E.2d 959 (1984). Those elements all have been met in the instant case.

Complainant argues that the parties are not the same because Amundson was not a party to the federal suit. That, though, is of no consequence in this situation. Respondents are not seeking to apply the doctrine of *res judicata* with regard to Amundson. They are seeking to apply the doctrine to the claim against Chicago Read. Clearly, Complainant and Chicago Read were the parties in the previous action. Therefore, the first *res judicata* element has been met.

Two claims comprise the same cause of action if they arise from the same set of facts. ***Smith v. City of Chicago***, 820 F.2d 916 (7th Cir. 1987). The allegations in the instant case and the allegations in the federal suit revolve around the same set of facts. Thus, the second element has been met.

Complainant argues that the federal court's summary judgment order "is immaterial" because a ruling on summary judgment is only a determination of whether the case should go to trial. In support of that position, she cites **Watson v. Amedco Steel, Inc.**, 29 F.3d 274 (7th Cir. 1994). **Watson** stands for the cited proposition only when a motion for summary judgment is *denied*. When a motion for summary judgment is granted, that action constitutes a disposition on the merits. **Webster and Spraying Systems Co.**, ___ Ill. HRC Rep. ___, (1985CF1738, July 26, 1991). Therefore, Judge Hibbard's summary judgment order satisfies the third element necessary to apply the doctrine of *res judicata*. As a result, the claim against Chicago Read must be dismissed with prejudice.

The issues are slightly different with regard to the claim against Garth Amundson. According to Respondents' argument, certain findings made by the federal court should be given collateral estoppel effect in this proceeding. If that argument is accepted, those findings would destroy Complainant's case against Amundson and justify dismissal of the claim against him. Complainant maintains that it would be improper for this forum to accept Judge Hibbard's findings.

There are three elements which must be met to invoke the doctrine of collateral estoppel. Collateral estoppel can apply when 1) the issue decided in the prior case is identical to the issue presented in the current case, 2) the party against whom

estoppel is asserted was a party or privity with a party to the prior case, and 3) the prior case resulted in a final judgment on the merits. ***Kalush v. Illinois Dep't of Human Rights Chief Legal Counsel***, 298 Ill. App. 3d 980, 700 N.E.2d 132 (1st Dist. 1998).

Based upon matters already discussed, the second and third elements clearly have been met. Complainant was a party to the federal suit, and that suit ended in a final judgment on the merits. The only question, then, is whether the issues in the earlier case and the instant case are identical.

According to Judge Hibbard's written decision, he carefully considered all the documentation submitted by the parties. He specifically considered whether Complainant had alleged that Amundson engaged in conduct of a sexual nature and whether that behavior had the effect of unreasonably interfering with Complainant's work performance and creating a hostile working environment. The judge found that Complainant had not raised an issue of fact on those issues. His decision specifically states that Amundson's alleged behavior was not sexual in nature and that it did not rise to the level of actionable sexual harassment. In fact, even accepting Complainant's allegations as true, the judge did not find that there was a genuine issue of material fact on the issue of Amundson's behavior.

The issues addressed by Judge Hibbard are identical to the issues that would have to be addressed before the Commission in order to find in Complainant's favor on her claim against

Amundson. Thus, it appears that Respondent has established the final element necessary to invoke the doctrine of collateral estoppel.

Complainant does not directly challenge the above analysis. Instead, she argues that there are other considerations which should be taken into account. Specifically, she notes that she could not have included Amundson in the federal litigation because federal law does not provide for individual liability for sexual harassment. Complainant argues that, as a result of her inability to include Amundson as a party, she was denied a full and fair opportunity to litigate the issues regarding him.

There are two reasons why Complainant's argument should be rejected. First, as a matter of course, collateral estoppel frequently will be used by someone who was not a party to the earlier litigation. As noted above, under the case law, only the party *against whom* collateral estoppel is asserted has to have been a party in the first action. Thus, the fact that Amundson was not a party in the federal suit does not bar application of collateral estoppel in the instant case.

Second, on the facts of the instant case, it is difficult to see why it should be necessary to take discovery from Amundson in order for Complainant to raise a genuine issue of material fact as to his actions. The whole point of Complainant's case is that Amundson engaged in behavior that was sexually harassing to her. She should already be aware of any harassment she has

experienced. Thus, Complainant has already had a full and fair opportunity to describe Amundson's behavior and that description was found to be insufficient to survive a motion for summary judgment. As a result, there is no equitable reason to avoid the application of collateral estoppel in this matter.

In other words, the federal court already has determined that Amundson's alleged behavior was not sexual in nature and that it does not rise to the level of sexual harassment. Those findings should be deemed to be controlling in the instant case, and the claim against Amundson should be dismissed.

RECOMMENDATION

Based upon the foregoing, Complainant's claim against Chicago Read is barred pursuant to the doctrine of *res judicata*. Moreover, giving collateral estoppel effect to the federal court's findings about Amundson's behavior justifies dismissal of the claim against him. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: February 21, 2001